

§ 550.181

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pay used to compute the pay for holiday work, overtime pay, or night pay differential.

LAW ENFORCEMENT AVAILABILITY PAY

§ 550.181 Coverage.

(a) Each employee meeting the definition of *criminal investigator* in § 550.103, and fulfilling the conditions and requirements of 5 U.S.C. 5545a and §§ 550.181 through 550.186, must receive availability pay to compensate the criminal investigator for unscheduled duty in excess of the 40-hour workweek based on the needs of the employing agency, except as provided in paragraph (b) of this section.

(b) Any Office of Inspector General that employs fewer than five criminal investigators may elect not to cover such criminal investigators under the availability pay provisions of 5 U.S.C. 5545a.

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§ 550.182 Unscheduled duty.

(a) *Unscheduled Duty Hours.* For the purpose of availability pay, unscheduled duty hours are those hours during which a criminal investigator performs work, or (except for a special agent in the Diplomatic Security Service) is determined by the employing agency to be available for work, that are not—

(1) Part of the 40-hour basic workweek of the investigator; or

(2) Regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111.

(b) *Regularly Scheduled Overtime Hours.* For criminal investigators receiving availability pay, regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111 are those overtime hours scheduled in advance of the investigator's administrative workweek, excluding—

(1) The first 2 hours of overtime work on any day containing a part of the investigator's basic 40-hour workweek, as required by § 550.111(f)(1); or

(2) The first 2 hours of overtime work performing protective duties authorized by section 3056(a) of title 18, United States Code, or section 2709(a)(3) of title 22, United States Code, on any day containing a part of the investigator's basic 40-hour work-

week, unless the investigator performs 2 or more consecutive hours of unscheduled overtime work on that same day.

(c) *Actual work hours.* To be considered to be performing work under paragraph (a) of this section, a criminal investigator must be performing work as officially ordered or approved, including work performed without specific supervisory preapproval, if circumstances require the criminal investigator to perform the duty to meet the needs of the employing agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval).

(d) *Availability Hours.* To be considered available for work under paragraph (a) of this section, a criminal investigator must be determined by the employing agency to be generally and reasonably accessible to perform unscheduled duty based on the needs of the agency. Generally, the agency will place the investigator in availability status by directing the investigator to be available during designated periods to meet agency needs, as provided by agency policies and procedures. Placing the investigator in availability status is not considered scheduling the investigator for overtime hours compensated under 5 U.S.C. 5542 and § 550.111. Availability hours may include hours during which an investigator places himself or herself in availability status to meet the needs of the agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval). A special agent in the Diplomatic Security Service may not be credited with availability hours and will be credited with only hours actually worked.

(e) *Ensuring availability.* Except as provided in paragraphs (e) and (f) of this section, an employing agency shall ensure that each criminal investigator's hours of unscheduled duty are sufficient to enable the investigator to meet the substantial hours requirement in § 550.183 and make the certification required under § 550.184.

(f) *Voluntary opt-out.* Notwithstanding paragraph (d) of this section,